

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

OCT 31 2008

UNITED STATES OF AMERICA

v.

LEIGH SKWAREK

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DAVID J. WALAND, CLERK
BY
DEPUTY _____

CASE NO. 4:02CR43

**REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Pending before the Court is the request for revocation of Defendant's supervised release. After the District Court referred the matter to this Court for a report and recommendation, the Court conducted a hearing on October 28, 2008 to determine whether the Defendant violated her supervised release. The Defendant was represented by Denise Benson. The Government was represented by Andrew Stover.

On October 15, 2002, the Defendant was sentenced by the Honorable Leonard Davis, United States District Judge, to 12 months and one day imprisonment, followed by a 5-year term of supervised release for the offense of Theft, Embezzlement or Misapplication by a Bank Officer or Employee. On August 15, 2003, Defendant was released from custody and ordered to commence service of a 5-year term of supervised release.

On July 28, 2008, the U.S. Probation Officer filed a Petition for Warrant or Summons for Offender under Supervision (Dkt. 40). The petition asserts that Defendant violated the following conditions of supervision: (1) Defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month; (2) Defendant shall provide the probation officer with access to any requested financial information for purposes of

monitoring compliance with the restitution order; (3) Defendant shall pay restitution in the amount of \$111,122.95; (4) under the guidance and direction of the United States Probation Office, Defendant shall participate in any combination of psychiatric, psychological or mental health treatment as deemed appropriate by the treatment provider.

The petition alleges that Defendant committed the following violations: (1) Defendant failed to report to the U.S. Probation Office on July 2, 2007, April 2, 2008, and July 10, 2008, as directed, and Defendant failed to submit written monthly reports by the fifth of the month for the months of April, June, July, August, September, October, and November 2007, and March, April, May and June 2008; (2) Defendant failed to submit a Personal Financial Statement as directed on July 27, 2007, February 21 and March 7, 2008 and failed to submit her 2007 tax return as directed; (3) Defendant failed to make monthly restitution payments in the amount of \$150 for the months of December 2007, March, April, May and June 2008, and Defendant is currently \$600 delinquent and her restitution balance is \$106,782.95; (4) Defendant failed to attend mental health counseling with Todd Lawhorn, as directed on July 27, 2007, the months of August, September, October and November 2007, and she was unsuccessfully discharged from treatment in December 2007, due to lack of participation.

Prior to the Government putting on its case, the Defendant entered a plea of true to the alleged violations. Defendant also waived allocution before a district judge. At the hearing, the Court recommended that Defendant's supervised release be revoked based on those violations.

RECOMMENDATION

Having heard the argument of counsel, the Court recommends that the District Court revoke the Defendant's supervised release. Pursuant to the Sentencing Reform Act of 1984, the Court

recommends that the Defendant be committed to the custody of the Bureau of Prisons to be imprisoned for a term of six (6) months, with 54 months supervised release to follow.

It is further recommended that Defendant be required to pay restitution in the amount of \$106,782.95 to Bank One Corporate Security. The restitution is due immediately, payable by cashier's check or money order, to the United States District Court and forwarded to the United States District Clerk's Office, P.O. Box 570, Tyler, Texas, 75710.

Within 72 hours of release from the custody of the Bureau of Prisons, Defendant should report in person to the probation office in the district to which Defendant is released. While on supervised release, Defendant should not commit another federal, state, or local crime, and should comply with the standard conditions that have been adopted by the Court, and should be required to comply with the following additional conditions:

Any amount that remains unpaid when Defendant's supervision commences is to be paid on a monthly basis at a rate of at least 10% of Defendant's gross income, to be changed during supervision, if needed, based on Defendant's changed circumstances, pursuant to 18 U.S.C. §3664(k). Additionally, at least 50% of receipts received from gifts, tax returns, inheritances, bonuses, lawsuit awards, and any other receipt of money (to include, but not limited to, gambling proceeds, lottery winnings, and found money) must be paid toward the unpaid restitution balance within 15 days of receipt. Restitution is payable by cashier's check or money order made out to the United States District Court and forwarded to the United States District Clerk's Office, P.O. Box 570, Tyler, Texas, 75710. Interest is waived.

Defendant should provide the probation officer with access to any requested financial information for purposes of monitoring employment.

Defendant should not incur new credit charges or open additional lines of credit without the approval of the probation officer unless payment of any financial obligation ordered by the Court has been paid in full.

Defendant should not participate in any form of gambling unless payment of any financial obligation ordered by the Court has been paid in full.

Under the guidance and direction of the U.S. Probation Office, Defendant should participate in any combination of psychiatric, psychological, or mental health treatment as deemed appropriate by the treatment provider.

Defendant should be required to submit to a drug test within 15 days of release on supervised release, and at least two periodic drug tests thereafter, as directed by the probation officer.

SIGNED this 31 day of Oct, 2008.



DON D. BUSH
UNITED STATES MAGISTRATE JUDGE